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Open-ended Working Group on the
Elaboration of a Draft Optional
Protocol to the Convention on
the Elimination of All Forms of
Discrimination against Women
10-21 March 1997
Agenda item 5

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, INCLUDING THE ELABORATION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION

Revised draft optional protocol submitted by the Chairperson on the basis of the compilation text contained in document E/CN.6/1997/WG/L.1 and proposals made at the forty-first session of the Commission (Part I)

Article 1

A State party [to the Convention that becomes a party] [that has signed and ratified the optional protocol] to the present Protocol recognizes the competence of the Committee to receive and [consider] [examine] communications [from individuals] [or groups of individuals] [subject to its jurisdiction] [concerning any of the rights set forth in the Convention] [who claim to be victims of a violation by that State party of any of the rights set forth in the Convention] [submitted in accordance with article 2].

[2. No communication shall be received by the Committee if it concerns a State [party to the Convention] that is not a party to this Protocol.]

Article 2

1. Communications may be submitted

(a) By [or on behalf of] [an] individual[s], group [of individuals] [or organization] [under the jurisdiction of a State party] claiming [to have suffered from a violation of any of the rights in the Convention] [that any of the rights enumerated in the Convention have been violated] [or claiming to be directly affected by the [deliberate] failure of [a] [that] State party to comply with its obligations under the Convention].

Alternative 1

[Communications may be submitted by individuals [[[and] [groups of individuals] with specific interest in women's welfare, particularly women's rights]], [[his/her organization or group of victims] and who observe or claim that the rights enumerated in the Convention have been violated]].

Alternative 2

[Communications may be submitted by an individual or group of individuals under the jurisdiction of a State party], [claiming that any of her/their rights enumerated in the Convention have been violated by that State party] [claiming to have suffered from a violation of any of the rights in the Convention], [and who has/have exhausted all available domestic remedies] [who can demonstrate that all available domestic remedies have already been exhausted].

(b) By [an individual, group or organization claiming that a State party has violated any of the rights set forth in the Convention or has failed to comply with its obligations under the Convention, if in the opinion of the Committee this person, group or organization has sufficient interest in the matter.]

Alternative 1

[an individual, group or organization with a sufficient/established interest in the matter on behalf of an individual or group of individuals claiming that a State party has violated any of the rights set forth in the Convention.]

Alternative 2

[on an exceptional basis, the communication may be submitted by:

(i) A duly designated representative of the victim or victims;

(ii) An individual or group of individuals acting on behalf of a victim or victims in circumstances where the victim is unable to act herself or to designate a representative/an individual or group of individuals acting on behalf of a victim or victims that has established that it is impossible for the person or persons affected to submit the communication or to designate a representative.]

Alternative 3

By [association or non-governmental organizations whose purpose is to defend women's rights and which have obtained the agreement of the person or persons

claiming to have suffered from a violation of one of the rights set forth in the Convention.]

Article 3

Communications shall be in writing and shall not be anonymous.

Article 4

Alternative 1

1. The Committee shall not declare a communication admissible unless it has ascertained that all available [legal] domestic remedies have been exhausted [in accordance with generally recognized rules of international law]; [this shall not apply where the Committee considers the application of the remedies to be [unreasonably prolonged] [unreasonable] or unlikely to bring effective relief] [unless the claimant demonstrates that such remedies are ineffective or that the application of the remedies has been unduly prolonged];

2. The Committee shall declare a communication inadmissible:

(i) That it considers to be incompatible with the provisions of the Convention;

(ii) That it considers to be an abuse of the right to submit a communication;

[(iii) That it considers to be manifestly ill founded] [or obviously politically motivated];

[(iv) That relates to facts that occurred before the entry into force of this Protocol for the State party concerned, [unless those facts continued after the entry into force of this Protocol for the State party]];

(v) Where the same matter [has been] [taken note of] [or] is being [examined] [considered] under another procedure of international investigation or settlement.

[3. A communication shall be in compliance with the principles of objectivity and impartiality [and should include information of legal remedies or reparation undertaken by the State party concerned]].

Alternative 2

A communication shall be inadmissible where, in the view of the Committee:

(i) It is incompatible with the provisions of the Convention;

(ii) It is an abuse of the right to submit a communication;

[(iii) It is manifestly ill founded] [or obviously politically motivated];

(iv) All available [legal] domestic remedies have not been exhausted [in accordance with generally recognized rules of international law] [unless in the view of the Committee the application of the remedies is [unreasonably prolonged] [unreasonable] or unlikely to bring effective relief] [unless the claimant demonstrates that such remedies are ineffective or that the application of the remedies has been unduly prolonged];

[(v) The facts that are the subject of the communication occurred prior to the entry into force of this Protocol for the State party concerned, [unless those facts continued after that date]];

(vi) The same matter [has been] [taken note of] [or] is being [examined] [considered] under another procedure of international investigation or settlement;

[(vii) It is in compliance with the principles of objectivity and impartiality [and includes information of legal remedies or reparation undertaken by the State party concerned]].

Article 5

[1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may [request] [recommend] the State party concerned to take interim measures [as appropriate] [as may be necessary] [to preserve the status quo and] to avoid [possible irreparable] [further] [harm] [damage] [if any] [to the victim or victims of the alleged violation] [after it has been determined that sufficient evidence exists to substantiate the claim].]

[2. The State party concerned [may] [shall] [give due consideration to] consider [urgently and positively] the recommendation under paragraph 1.]

[2 bis. Where the Committee exercises its power under paragraph 1, this does not imply a determination [on admissibility] [or the merits] of the communication.]

Article 6

[1. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under this Protocol confidentially to the attention of the State party concerned. The Committee may in exceptional cases involving a threat to the life or physical integrity of the [individual or individuals who is/are the subject of the communication] [author or victim]

withhold [her/their] or [her identity or identities] [identity] during consideration of protective interim measures.]

Alternative 1

[The State party should be informed confidentially of the communication. The identity of the individual should also be revealed to the State party unless the individual objects.]

Alternative 2

[The Committee may bring any communication admitted by it under this Protocol confidentially to the attention of the State party concerned, but shall not reveal the identity of the author unless prior consent is given.]

2. Within [three] [six] months, the receiving State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State party.

[3. During its examination of a communication, the Committee shall place itself at the disposal of the parties concerned with a view to facilitating settlement of the matter on the basis of respect of the rights and obligations set forth in the Convention] [in the event of agreement between the parties, the Committee shall adopt findings taking note of the settlement of the matter].

Article 7

1. The Committee shall consider communications received under this Protocol in the light of all [written] information made available to it by [or on behalf of] the [author] [individual] and by the State party concerned. [The Committee may also take into account information obtained from other [United Nations] sources, provided that this information is transmitted to the author and the State party for comment.]

2. The Committee shall hold closed meetings when examining communications under this Protocol.

[2 bis. When a communication is being considered, the State party concerned shall be entitled to take part in the proceedings of the Committee and to make submissions orally and/or in writing.]

3. After examining a communication, the Committee [shall adopt its views [together with any recommendations] on the communication and] shall transmit [these] [its views] to the State party [concerned] and to the [individual[s]] [victim].

Alternative 1

3. After examining a communication, the Committee [shall adopt its views [together with any recommendations] [including, where appropriate, specific

measures] on the communication and] shall transmit [these] [its views] to the State party [concerned] and to the [individual[s]] [victim].

Article 8

[1. The Committee may request that the State party concerned take specific measures to remedy any violations or failure to give effect to its obligations under the Convention.]

[2. The State party shall take all steps necessary to remedy any violation of rights or failure to give effect to its obligations under the Convention. The State party shall ensure that appropriate remedy including, if need be, adequate reparation, is provided.]

[3. Within [three] [six] months the receiving State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy that has been implemented by the State party.]

Alternative 1

[Within [three] [six] months the receiving State party shall submit to the Committee a written response to the views of the Committee including explanation of any action taken in the light of its recommendations].

Article 9

[1. The Committee may invite the State party concerned to discuss with it the measures that that State party has taken to give effect to the views, suggestions or recommendations of the Committee.]

[2. The Committee may invite the State party concerned to include in its subsequent report under article 18 of the Convention details of any measures taken in response to the Committee's views, suggestions and recommendations.]

Alternative 1

[2. The Committee may invite the State party to submit further information about any measures the State party has taken to give effect to its views or recommendations, including as deemed appropriate by the Committee, in the State party's subsequent report under article 18 of the Convention.]